

BASIS STATEMENT
Amendments to Chapter 305, Permit by Rule

History

This rulemaking is not intended as a general revision to Chapter 305. Several specific sections were proposed to be amended. The changes fell into a number of categories.

- Addition of a new PBR section for activities in, on or over significant vernal pool habitat, and meeting specified requirements, as required by PL 2003 c. 183, sec. 1(16) and Ch. 335(9)(D).
- Addition of a new PBR section for activities in existing developed areas, and in, on, or over high or moderate value inland waterfowl or wading bird habitat, or shorebird nesting, feeding, or staging areas.
- Changes needed to conform with recent amendments to Chapter 355, Coastal Sand Dune Rules.
- Update of Ch. 305(11), State Transportation Facilities.
- Minor clarifications and updating.

A combined hearing on proposed amendments to Chapter 305, Permit by Rule, and Chapter 310, Wetlands and Waterbodies Protection Rules was held on October 5, 2006. The public comment period closed on October 16, 2006 at 5:00 p.m..

Comment and Response

The following persons submitted written comments. Persons indicated with an asterix (*) also testified at the combined hearing on proposed amendments to Chapters 305 and 310.

	NAME	AFFILIATION (IF ANY)
1	Jennifer Burns*	Maine Audubon
2	Stephen M. Dickson, PhD	Maine Geological Survey, Dept. of Conservation (DOC)
3	Judy Gates*	Maine Dept. of Transportation (DOT)
4	Julian C. Holmes	
5	Hillary Lister	
6	George Powell	Boat Facilities Division, DOC
7	Bonnie Preston	
8	Brian M. Swan	Maine Dept. of Marine Resources (DMR)
9	Michael S. White	White Bros. Inc.
10	Richard S. Whiting	

Comments reflected below may be abbreviated and/or consolidated. In some cases, typographical errors in comments have been corrected. The name of the person who submitted a comment appears at the end of the comment.

Section 1. Introduction

Comment. The Maine Department of Transportation (MDOT) supports proposed changes to Ch. 305, Permit by Rule. We concur that the changes primarily reflect an increased reliance on Maine DOT's exemplary best management practices (BMPs) and modify obsolete or duplicative language. In addition to the proposed changes, MDOT respectfully requests that Section 1(C)(1)(b) be amended as follows:

(b) Activities listed in Section 10 (Stream Crossings) or Section 11 (State transportation facilities) performed or supervised by individuals currently certified in erosion control practices by the DEP are exempt from the 14 day waiting period. To be certified in erosion control practices, an individual must successfully complete all course requirements of the Voluntary Contractor Certification Program administered by the DEP's Nonpoint Source Training and Resource Center.

MaineDOT prides itself on applying its BMPs for construction and erosion and sedimentation control; the effectiveness of this practice is reflected in the absence of enforcement activities over the last nine years. All personnel and contractors performing or supervising MaineDOT or MTA projects are required to successfully complete all course requirements of the Voluntary Contractor Certification Program administered by the DEP's Non-point Source Training and Resource Center. Maine DOT has regionally based staff associated with the Environmental Office to provide on-site technical assistance as part of any project, allowing us to be immediately responsive to inquiries from the public or other agencies regarding the efficacy of BMPs. Over the last five years, DOT has submitted an average of 150 Permit by Rule notifications annually to DEP. Of these notifications, between zero and one per year are returned to us as deficient. This track record demonstrates that Maine DOT appropriately applies the standards of Section 11 and implements projects accordingly.

An exemption from the 14-day waiting period would result in increased responsiveness to the need for improvements and repairs to state transportation systems, making most efficient use of tax dollars, resources and personnel in an environmentally responsible manner. (Gates)

Response. The department acknowledges MDOT's performance and commitment to staff training. However, the proposal to waive the 14-day review period is not accepted.

In the current rules, the 14-day review period is only waived in one situation: for individuals certified in erosion control practices constructing stream crossings under Section 10. This waiver applies to all such individuals undertaking stream crossings, including MDOT staff.

Section 11 applies to the maintenance, repair, reconstruction, rehabilitation, replacement or minor construction of a State Transportation Facility carried out by, or under authority of, the Maine Department of Transportation or the Maine Turnpike Authority, including any testing or preconstruction engineering and associated technical support services.

In order to adopt a waiver of review, it is not sufficient that the entity requesting the change has a good record. Maine DEP has no greater regulatory oversight over MDOT or MTA, under Chapter 305, than it has over a private entity. Some private entities also rarely have notices returned, and the department is able to demonstrate this through the continuing oversight provided by review of notices. The review of permit by rule notices is an important part of implementation of the permit by rule program. The department does not consider it appropriate

or equitable to drop the 14-day review period for activities conducted by MDOT or MTA under Section 11 at this time.

It should be noted that other state agencies filing under Section 13, Habitat Creation or Enhancement and Water Quality Improvement Activities, and entities filing under Section 15, Public Boat Ramps, are also subject to the 14-day review period.

Section 2, Activities adjacent to protected natural resources, and additional sections with similar provisions

Note: the following four comments are addressed in a single response, following the comments.

Comment. This comment concerns the proposal to eliminate language in the current Permit by Rule standards in Sections 2, 3, 4, 7, 8, 9, 10, 12, 13, and 15 regarding use of chemically treated wood material in coastal waters.

Although it is understandable that DEP might seek to eliminate requirements that are not enforceable such as air curing chemically treated lumber and other wood material in an upland location prior to construction, use of chemically untreated lumber is preferred and is a recommendation that this agency often makes in connection with proposed projects that require a full NRPA permit. It is my understanding that the current generation of chemically treated wood products have reduced arsenic levels to protect human health, but have increased levels of copper in order to maintain preservative effectiveness. Recent studies have demonstrated that it is copper that is of most concern to marine and other aquatic environments, and that the new generation of chemically treated wood products would have an increased deleterious affect. In any case while the use of chromated copper arsenate (CCA) treated wood in residential applications has been phased out, the use of CCA is still permitted in commercial applications such as piers and wharves. Treated wood used in marine applications is impregnated with a much higher concentration of CCA preservative than for previous residential applications.

It would seem to make sense to maintain some protective measures that might reduce the levels of harmful chemicals introduced into the environment. I urge the DEP and the Board of Environmental Protection (BEP) **not** to make these proposed changes, or at the very least to retain the language stating the preference for the use of untreated material. (Swan)

Note: The following article was cited in support of the statement that "Recent studies have demonstrated that it is copper that is of most concern to marine and other aquatic environments, and that the new generation of chemically treated wood products would have an increased deleterious affect": "Effects of CCA Wood on Non-Target Aquatic Biota", Judith S. Weis, Department of Biological Sciences, Rutgers Univ., Newark, N.J., and Peddrick Weis, Department of Radiology, New Jersey Medical School, Newark, N.J. The article was submitted with the comments.

Comment. I object to proposed changes that would effectively encourage the use of CCA treated wood as erosion control on bodies of water. There seems to be no environmentally protective basis for this rule change. It is illegal to sell CCA-treated wood for residential use in Maine as a result of legislation passed in 2003. The primary chemicals used in CCA wood are highly toxic, known carcinogens, and regulated as pesticides by the EPA. Treated wood that is regularly exposed to water or damp soil, as it would likely be if used as erosion control on a body of water, leaches out more chemicals than that which is only occasionally exposed to rainfall.

According to the 1993 reports, "Trophic Transfer of Contaminants from Organisms Living by Chromated-Copper-Arsenate (CCA)-Treated Wood to Their Predators" and "Update of Metals from Chromated-Copper Arsenate (CCA)-Treated Lumber by Epibiota", the chemicals from CCA-treated wood were shown to build up in the bodies and be a threat to the health of marine life such as mussels and snails that were exposed to the treated wood.

I urge the BEP to maintain the rule that "The use of untreated lumber is preferred" for use as erosion and sedimentation control around bodies of water, and not to strike out rules that offer some level of protection to our water. Safe, healthy drinking water is becoming a rarity, so why increase the threat to that which is left? (Lister)

Comment. I have long been active in opposing the use of arsenic for wood preservation in areas that will endanger the environment, its residents, and its users -- human and wildlife.

Arsenic is a hazardous poison, and its use as a wood preservative has been the subject of widespread public outcry. The proposed DEP rulemaking changes are unacceptable threats to the present rules that were established following the long time use of Arsenic and other treatments for wood that utilize dangerous poisons.

Please turn down the shameless irresponsible DEP proposed rule changes to Chapter 305 Sections 3, 4, 9, 10, 11, 13, and 15 that concern the use of treated lumber. (Holmes)

Comment. I cannot even imagine why anyone on the Board of Environmental Protection would think it is a good idea to allow arsenic treated wood to be used for erosion control anywhere near groundwater in Maine.

Arsenic is a known carcinogen, and causes many other health problems in people, fish, and wildlife. Its use in residential construction has been banned, but now it is allowed to be burned in biomass furnaces, one rotten idea, and it is possibly going to be spread on land near our waterways. This can only be give-aways to industrial interests, but isn't the BEP supposed to protect us from predatory industrialists? I certainly hope so! Please do not allow this to happen.

We have been so propagandized in this country to believe that economic salvation will come only from big business interests that we must all bow to the wishes of the CEOs that we are sometimes afraid to do what we know is right and tell them they can't have everything. Water is essential to life--even more essential than food in ways--and as such should be considered sacred and not available to be abused for corporate profit. Keep our Maine waters clean! (Preston)

Response. The DEP proposed to make the following change in Section 3(C)(15) and other sections (with slight non-substantive textual variations in similar sections):

- (15) ~~The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used, provided it is cured on dry land in such a manner to expose all surfaces to the air for a period of at least 21 days prior to construction. Lumber~~ Wood ~~treated with creosote or pentachlorophenol -or creosote~~ may not be used where the wood will come in contact with water.

The change was proposed because of (a) the federal phase out of CCA treated lumber for residential use, and (b) the perceived reduction of CCA use in marine waters. It should also be noted that federal requirements still allow use of CCA treated lumber in marine waters. The DEP acknowledges the concern about increased levels of copper in the new generation of

chemically treated wood products, and continued concern about use of CCA. One comment also noted recent Maine legislation on this topic. Therefore, the proposed amendment has been altered to read as follows. Text which is not underlined or struck is in the current rule.

- (15) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used if use is allowed under federal law and not prohibited from sale under 38 M.R.S.A. 1682, and provided it is cured on dry land in such a manner to expose all surfaces to the air for a period of at least 21 days prior to construction. Lumber ~~Wood~~ treated with creosote or pentachlorophenol ~~or creosote~~ may not be used where the wood will come in contact with water.

Section 9. Crossings (utility lines, pipes and cables)

Comment. While the inclusion of coastal waters and great ponds in Section 9(B)(3), as proposed, is consistent with the standards in Section 9, the period of October 2 to July 14 when approval of timing of the activity is required does not address all potential concerns related to crossings of many marine waters. Cable laying operations, for example, have the potential to interfere with commercial fishing and recreational boating in Maine coastal waters during the period of July 15 to October 1. The requirement for approval of timing of activity from DMR for all utility crossings of marine and estuarine waters within the State's jurisdiction should be considered.

Approval of timing of activity should rest with the resource agency responsible for the conservation of the resource that may be affected. It would make sense **not** to add "unless otherwise approved by the department" in Section 9. This proposed addition could circumvent the usefulness of the timing approval process. (Swan)

Response. The last sentence in (3) below, with double-underlined text, has been added to the proposed changes in order to address the concern about crossings of marine waters.

- (3) For any work involving trenching or disturbance of substrate in a coastal wetland, great pond, river, stream or brook that occurs between October 2 and July 14, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources must be submitted to the DEP with the notification form, unless otherwise approved by the DEP based upon the location of the project. In addition, for a utility crossing of marine or estuarine waters at any time of the year, notice of approval of the timing from the Department of Marine Resources must be submitted to the DEP with the notification form.

The text "unless otherwise approved by the department" has been retained, although the criteria "based upon the location of the project" has been added. Also "department" was changed to "DEP" consistent with usage in Section 1. The proposed amendment is not intended to circumvent approval of the timing of an activity by the appropriate resource agency. It is intended to allow the DEP to permit an applicant to not seek timing approval from a resource agency when the project is located in an area in which the resource agency's jurisdiction does not apply. For example, the change would allow the DEP to tell an applicant that it was not necessary to seek approval of timing from DMR for a project on a great pond. The DEP is retaining authority for the decision, based upon experience that applicants are not always correct concerning which agency's (or agencies') jurisdiction applies.

Section 15. Public boat ramps

Comment. Section 15(A)(3) should be changed to read:

~~This section does not apply to~~ When a new boat ramp is proposed on a lake infested with aquatic invasive plants, as defined in 38 M.R.S.A. Section 410-N, additional standards listed in Subsection C, Paragraph (13) shall apply. The Department of Environmental Protection identifies and maintains a list of these infested lakes.

Section 15(C)(13) should be added as follows:

(13) If the proposed boat ramp is to be located on a lake infested with aquatic invasive plants, the following standards shall also apply:

- (a) The site shall be located at least 500 ft from the confluence of the lake and any inlet stream, or river as defined in 38 MRSA, Section 436-A(11), the Mandatory Shoreland Zoning Act ;
- (b) The site shall be located at least 500 ft from any DEP designated infestations of aquatic invasive plants;
- (c) The lake substrate shall be predominantly sandy or gravelly and largely devoid of aquatic vegetation; and
- (d) The site shall be exposed to moderate wind and wave activity.

If MDOT, a natural resource agency or municipality seeks to site a new public boat ramp, which includes hand carry access, on an infested lake, they are required to submit a Tier 3 Level, NRPA permit application. A Tier 3 application is reserved for projects that expect to disturb over an acre of wetlands. This permitting process requires the applicant to submit an application with at least 11 attachments, including far more details than required by the PBR process, many of which do not relate to the concerns of invasive aquatic plants. It also subjects the application to possible public hearings, and significant costs and delays associated with these hearings. It seems more efficient for DEP to establish reasonable standards for siting boat access sites on infested lakes rather than subject applicants to the whims of the staff or Board of Environmental Protection. While the public should be concerned with the siting of new boat ramps on infested lakes and ponds, there should be a standard developed for evaluating such projects, so that each and every one does not result in long, expensive public hearings. (Powell)

Response. Permit by Rule is designed for projects that will not significantly affect the environment if carried out according to specified standards, and usually addresses relatively low impact projects for which standardized approaches have been developed over time. Maine is still at the early stages of dealing with waterbodies containing invasive aquatic plant species, and is continuing to be challenged with the appearance of new species. Individual situations on lakes can be highly variable. It is important for the department to be able to issue an individual approval order that is subject to enforceable, site-specific conditions, including conditions respecting future changes in lake conditions and lake management. There are a very small number of projects at issue.

The minimal permit by rule process is not the appropriate process for these types of projects at this time.

Comment. Section 15(B)(3) should be changed to read:

If the project results in the addition or expansion of access drives or parking areas, ~~T~~the project design plan, erosion control plan and a request for review for an activity on great ponds classified as GPA under 38 M.R.S.A. Section 465-A must be submitted to the DEP's Division of Watershed Management (DWM) prior to submitting the notification form to the DEP. A certification from DWM must be obtained and must be included with the notification form, along with final project plans and the erosion control plan, when it is submitted to the DEP.

In the case where a project is only to renovate an existing boat access facility, without increasing the size or location of the existing footprint of the access drive, or parking area, the project does not fall under the jurisdiction of the Stormwater or Soil Erosion Rules, and should not require the redundant step of having the DWM state so. This change will assist the boating access programs and DWM perform their duties more efficiently. (Powell)

Response. The reasoning supporting the suggested change appears to be inconsistent with permit requirements under 38 MRSA 420-D and Chapter 500, Stormwater Management. One acre or more of disturbed area requires a permit, and "disturbed area" explicitly includes redevelopment (although not maintenance) under the rule definitions. It is not necessary to have an addition or expansion for the standards to apply. An addition or expansion is also not necessary for the erosion standards contained in 38 MRSA 480-C to apply.

However, the request seemed intended to remove the filing requirement for projects that only involved renovations to existing facilities. The department considers it acceptable to make the proposed change, with a clarification intended to indicate that the requirement continues to apply to *new* as well as expanded access roads and parking areas.

The amendment would then read:

If the project results in new or expanded access drives or parking areas, ~~T~~the project design plan, erosion control plan and a request for review for an activity on great ponds classified as GPA under 38 M.R.S.A. Section 465-A must be submitted to the DEP's Division of Watershed Management (DWM) prior to submitting the notification form to the DEP. A certification from DWM must be obtained and must be included with the notification form, along with final project plans and the erosion control plan, when it is submitted to the DEP.

Comment. Section 15(B)(4) should be changed to read:

The applicant shall submit a copy of the project design plan along with a copy of the notification form to the Department of Conservation, Bureau of Parks and Lands, Submerged Lands Program (State House Station #22 Augusta, Maine 04333) at the time the notification form is submitted to the DEP. Work on the activity may not begin until a lease or easement is obtained or the Bureau of Parks and Lands has provided notification that one is not necessary.

Often these plans are submitted to the Bureau's Boating Program, and processing can be delayed while the Boating Program seeks to determine why the materials were sent to them, and forwards the material to the Submerged Lands Program. This change will clarify where they are to be sent, making the process more efficient for state agencies and applicants. (Powell)

Response. The suggested change has been made.

Section 16. Activities in coastal sand dunes

Comment. The proposed permit by rule amendments to Section 16 put the finishing touches on recommendations made by the Beach Stakeholder Group that were approved by the Maine Legislature. Maine Audubon considers the outcome on the Group's recommendations to be a win-win solution for everyone: wildlife, beach front property owners and beach visitors. The amendments include: allowing minor repairs to be conducted with a permit by rule, deleting beach nourishment from the list of activities for which a permit by rule is available and adding the installation or repair of underground utility lines. Last, the repair or replacement of a patio, deck, driveway or parking area is allowed as long as the dimensions are not increased. (Burns)

Response. No change necessary.

Comment. Suggest making the following changes to Section 16(B)(3)(c):

(c) For seawall repair or replacement only, an accurate plan drawn to scale by a licensed surveyor, coastal geologist or professional engineer showing the location of the existing and proposed wall (in Universal Transverse Mercator, State Plane, or Latitude and Longitude coordinates) and the elevation of the wall(s) surveyed in feet or meters referenced to the most recent vertical datum (e.g. NAVD88) and described in writing in relation to a nearby permanent and reproducible elevation control points, such as National Geodetic Survey, National Ocean Service, or Maine Department of Transportation benchmarks ~~a described point on a building or other structure~~. The plan must be signed and dated by the person responsible for preparing the drawing, and...

These changes will result in a permanent record of seawall dimensions in both a horizontal and a vertical framework that can be used in the permit review process with other topographic information such as dune or floodplain elevations. These changes will also provide the department with an accurate record of wall elevations that can be referred to in future seawall repair or replacement projects. These coordinates lend themselves to archiving in a geographic information system rather than in paper map files. This elevation information can be provided by the same professional that provides the plan drawings and should not significantly add to the cost of preparing an application. (Dickson)

Response. This provision is intended to give department staff a fixed location on the ground for reference, so that it is not necessary for the applicant or the department to hire a surveyor to determine if someone has increased the dimensions of an existing structure. The department is unaware of any problems in determining compliance with a seawall replacement activity under the permit by rule program since this section was amended on May 25, 2005 to add a reference point requirement. The additional information requirement suggested by the comment would require that the applicant pay for a survey, and may result in the department needing to have a survey conducted to resolve issues in an enforcement case. Because of this potential cost, and because the department is concerned that the information would rarely be used in the regulatory process, the change proposed by the comment has not been made at this time.

Note: the only change originally proposed to this provision by the department was to add the words "repair or" following "seawall" in the first line.

Section 19. Activities in, on or over significant vernal pool habitat.

Comment. Section 19 of the proposed amendments focuses on significant vernal pools and is truly the result of the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife working, and the Natural Resource Committee's hard work and creative thinking. It provides property owners with an opportunity to move forward with their development plans without needing to have the significance of their vernal pool first determined. (Burns)

Response. No change required.

Section 20. Activities in existing developed areas located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.

Comment. Section 20 of the permit by rule changes focuses on high and moderate value wading bird and waterfowl habitat and shorebird nesting, feeding and staging areas. The rule protects high and moderate value shorebird feeding and staging areas and 250 feet around the habitats. These areas have been identified by the Maine Department of Inland Fisheries and Wildlife on maps. These maps are based on the specific criteria and have been developed over decades of field work.

The significant wildlife habitat rules will not stop development. An activity that takes place in, on, over, or adjacent to such habitat must meet certain standards which include avoid and minimize impacts. If one's property is large enough to develop outside of the 250 feet of upland habitat, DEP will ask that this happen. If one's property is already developed, an abbreviated permit by rule process (permit by rule) will be available once the BEP approves the amendments. If one's property isn't large enough to accommodate development outside of the 250 feet, DEP will work with the property owner to minimize impacts.

Protecting shorebird habitat is critical in order to ensure that the birds are able to use the rich intertidal habitat available to acquire the large fat reserves needed to fuel their transoceanic flight (Bahamas to Brazil and for some Uruguay, Argentina and Chile). The birds gorge themselves on invertebrates, some eating up to 23,000 individuals in one tidal cycle, to prepare for their long journey. These intertidal areas are the shorebirds' grocery stores.

Maine's Downeast region, in particular, is blessed with spectacular shorebird habitat. The Harrington-Addison area alone has national significance as a shorebird staging area. During the 1980s, the coastal zone from Trenton Bay east to Perry was identified as probably the most important fall migratory stopover area in the eastern U.S. for four species of shorebirds (semipalmated sandpipers, semipalmated plovers, white-rumped sandpipers and whimbrels). Once gone, there will be no other places for them to go and the populations will dramatically decline or possibly disappear altogether.

Maine Audubon supports section 20 of the proposed permit by rule. The proposal to allow a permit by rule for parcels with existing development offers a balanced and reasonable approach to the protection of these habitats. (Burns)

Response. No change necessary.

General comments

Comment. I am writing on behalf of Maine Audubon and our 11,000 members and supporters in favor of the proposed amendments to Chapters 305 and 310. Maine Audubon is very pleased to have the opportunity to comment in strong support of these rule amendments because this is the final step in what has been a very long process.

The permit by rule changes address significant wildlife habitat. The revised significant wildlife habitat rules have already been finally adopted. These rules reflect decades of hard work and the deep thinking that went into how to best regulate these important habitats. (Burns)

Response. No change necessary.

Comment. First of all I'm not happy with the whole vernal pool protection regulations to begin with. I see it as another way for the growth of this State to be controlled by people who don't own the land, and if it's going to happen it ought to be a taking and the owner ought to be compensated for the lost use of the land he or she will be required to pay taxes on. This is a way bigger issue than I can stand in front of, so I'll offer the following meager comments for the record:

1. This will have an effect on municipalities, how could it not. Municipalities are always working with the land, whether it is a new school, ball field, transfer station, or 100 other public infrastructure projects. Do we say it "will not" to keep it under the radar of the Maine Municipal Association? There is very little we have for regulation today that doesn't affect Municipalities. Aren't they made up of the individual taxpayer, who ultimately pays the bills for everything?
2. As to "understandable by the average citizen" without the help of an engineer and attorney I can't keep it all straight, and I work with the land regulation process everyday. For someone to understand the proposed rules they would need to understand the underlying law. Even if they wanted to and had the time and desire to understand it they would have to quit work and read for months to get up to speed. Aren't these two items just window dressing for making it look like the average public understood the issues and weighted in on the side of more regulation. (White)

Response. The comment appears to be largely a comment on the public notice (MAPA3 form), which was published regarding the public hearing on the proposed rule amendments, rather than a comment on the text of the proposed rule amendments. The effect of the current rulemaking is to establish a simpler, less expensive licensing procedure (permit by rule) for certain projects impacting significant vernal pool habitat through amendment of Chapter 305, Permit by Rule. Statutory and regulatory provisions protecting vernal pools under the Natural Resources Protection Act were established through previous statutory and regulatory changes, and are not addressed or affected by this rulemaking.

Comment. I am concerned over the proposed modification of shore land setbacks from 75 feet to 250 feet in a large number of designated bird habitat areas, many of which are in Maine's poorest region, Washington County. My wife and I recently purchased a 2.6 acre lot in the Bill's Point subdivision on Pinkham Bay in Steuben. On either side of our lot there are two homes about 75-80 feet from the shore. Because circumstances did not allow for us to build yet, we now may find ourselves unable to build in a manner commensurate with surrounding uses, a most unappealing alternative. Having spent years on Auburn Zoning Board of Appeals and recently, on the Auburn Planning Board, I find it unimaginable that the City would attempt to override legally approved

plans for development of previously approved subdivisions. We purchased our property with approved building footprint and septic system locations, in good faith that the plan incorporating these was properly approved by the Town of Steuben Planning Board and could legally be built upon the face of the earth as approved. I find it equally unimaginable that DEP could override what I consider to be deeded rights of reasonable use of my property as defined only a couple of years ago by the standards in place at the time.

I do consider myself an environmentalist and am in general support of reasonable bird habitat protection, but feel strongly that, at a minimum, grandfathering of properties sold prior to the adoption of a new rule must occur in the interest of fairness. The state can achieve its objectives by continuing to encourage protection of land, through such programs as the Land for Maine's Future, expansion of bird sanctuaries, regulation of as yet undeveloped properties, encouragement of Planned Unit Developments, with setback waivers in exchange for meaningful open space to allow for habitat, etc.

Finally, the routine statement that the proposed rule will not have a fiscal impact on municipalities seems most inaccurate. Property owners throughout affected areas are turning in applications for property tax abatements left and right in response to the proposed rule and the fiscal impact on already stressed municipalities may be quite significant if the rule is allowed to stand as written. (Whiting)

Response. The proposed amendments to Chapter 305 do not include the provisions mentioned in this comment. The changes to Chapter 305 only create a simplified licensing procedure, permit by rule, for certain activities located in existing developed areas located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.

The following non-substantive, typographical and numbering errors were found in revising the rule, and have been corrected.

Section 7(C)(2). "department" was changed to "DEP", consistent with usage in Section 1.

Section 11(B)(3). "Standard Specifications for Highways and Bridges, dated December 2002" changed to "Standard Specifications, dated December 2002". This is the same document, but the title was in error. The title was shortened for the 2002 revision of the 1995 edition.

Section 11(B). Numbering was corrected as shown below.

~~(1826)~~ Non-native species may not be planted in restored areas.

~~(1927)~~ Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 *et seq.*

~~(2028)~~ Disturbance of vegetation must be avoided, if possible. Where vegetation is disturbed outside of the area covered by any road or structure construction, it must be reestablished immediately upon completion of the activity and must be maintained.

~~(2129)~~ A vegetated area at least 25 feet wide must be established and maintained between any new stormwater outfall structure and the high water line of any open water body. A velocity reducing structure must be constructed at the outlet of the stormwater outfall that will create sheet flow of stormwater, and prevent erosion of soil within the vegetated

buffer. If the 25 foot vegetated buffer is not practicable, the applicant must explain the reason for a lesser setback in writing. Approval from the DEP must be in writing and any recommendations must be incorporated into the activity.

Section 11(C)(4). "Standard Specifications for Highways and Bridges, dated December 2002" changed to "Standard Specifications, dated December 2002". This is the same document, but the title was in error. The title was shortened for the 2002 revision of the 1995 edition.

Section 16(D)(10(a)). Numbering was corrected, changing from (1), (2), (3) to (i), (ii), (iii) as shown below.

(a) Any portion of the coastal sand dune system that can reasonably be expected to become part of a coastal wetland in the next 100 years due to cumulative and collective changes in the shoreline from:

(i) Historical long-term erosion;

(ii) Short-term erosion resulting from a 100-year storm; or

(iii) Flooding in a 100-year storm after a two-foot rise in sea level; or

Section 16(D)(10(b)). "department" was changed to "DEP", consistent with usage in Section 1.

Section 19(A)(note). "department" was changed to "DEP", consistent with usage in Section 1.

Section 19(B)(3)(b). A noun was missing in the sentence. "activity" was added after "proposed" at the beginning of the sentence.

(b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and

Section 19(C)(second paragraph). "department" was changed to "DEP", consistent with usage in Section 1.

Section 20(B)(3)(b). A noun was missing in the sentence. "activity" was added after "proposed" at the beginning of the sentence.

(b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and

Section 20(C)(3). "quality" was changed to "qualify" in the first line.

(3) An activity of a type that would qualify for a permit by rule under one of the sections listed below, notwithstanding any restriction concerning significant wildlife habitat that may be in that section, must also meet the requirements of that section.

Section 20(D)(3)(note). "department" was changed to "DEP", consistent with usage in Section 1.